



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

COLUMBIA ROSEWOOD MEDICAL CTR
C/O DAVIS FULLER JACKSON KEENE
11044 RESEARCH BLVD STE A-425
AUSTIN TX 78759

Respondent Name

TRANSCONTINENTAL INSURANCE CO

Carrier's Austin Representative Box

Box Number 47

MFDR Tracking Number

M4-99-1636-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Judging by the language of the opinion in that case, it seems that the predecessor to Rule 134.400 was mentioned favorably, while the subject Rule (134.400) was criticized in that it failed to take into account 'differences in geography and complexity of procedure...'. The predecessor to Rule 134.400 was Rule 42.110(b)(2) which establishes an interim guideline of '...adjusted billed charges times a ratio of .90.'"

Amount in Dispute: \$2811.50

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary:

- I. "FAILURE TO COMPLY WITH TWCC RULE 133.305.
- II. THE REQUEST FOR REVIEW SHOULD BE DISMISSED BECAUSE PROVIDER FAILED TO ATTEMPT IN GOOD FAITH TO RESOLVE THE INSTANT FEE DISPUTE AS REQUIRED BY THE ACT.
- III. PROVIDER IS BARRED BY THE DOCTRINE OF RES JUDICATA FROM RELITIGATING THE ISSUE OF WHETHER THE FEE RATE ESTABLISHED UNDER THE PREVIOUS GUIDELINES MEETS THE STANDARDS OF SECTION 413.011(b).
- IV. FEES ALREADY PAID ARE IN ACCORDANCE WITH THE ACT.
- V. NO DOCUMENTATION TO SUPPORT CLAIM THAT FEES ALREADY PAID ARE NOT IN ACCORDANCE WITH STANDARDS OF SECTION 413.011(b).
- VI. THE BURDEN OF PROOF RESTS WITH THE HOSPITAL TO SHOW THAT THE FEES PAID TO DATE FALL BELOW STATUTORY STANDARDS.
- VII. PROVIDER FAILS TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT ADDITIONAL PAYMENTS ARE NECESSARY TO MEET THE STANDARDS OF SECTION 413.011(b).
- VIII. CARRIER'S OWN PROOF ESTABLISHES THAT THE FEE PAID EQUALS OR EXCEEDS THE PAYMENT REQUIRED UNDER SECTION 413.011(b)."

SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
March 24, 1993 through March 25, 1993	Inpatient Hospital Services	\$2811.50	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. Former 28 Texas Administrative Code §133.305, effective June 3, 1991, 16 *Texas Register* 2830, sets out the procedures for resolving medical fee disputes.
2. Former 28 Texas Administrative Code §134.1(f) effective October 7, 1991, 16 *Texas Register* 5210, sets out the reimbursement guidelines for the services in dispute.
3. This request for medical fee dispute resolution was received by the Division on August 14, 1998.
4. Neither party to this dispute submitted copies of explanation of benefits to support the respondent's reduction of payment for the disputed services

Findings

1. 28 Texas Administrative Code §133.305(a), effective June 3, 1991, 16 *Texas Register* 2830, requires that "A request for review of medical services and dispute resolution, as described in the Texas Workers' Compensation Act (the Act), §8.26, shall be submitted to the commission at the division of medical review in Austin, no later than one calendar year after the date(s) of service in dispute." The applicability of the one-year filing deadline from the date(s) of service in dispute was confirmed in the court's opinion in *Hospitals and Hospital Systems v. Continental Casualty Company*, 109 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied). Per 28 Texas Administrative Code §102.3(a)(1), effective January 1, 1991, 15 *Texas Register* 6747, "In counting a period of time measured by days, the first day is excluded and the last day is included." The request for dispute resolution of services rendered on date of service March 24, 1993 through March 25, 1993 was received by the Division on August 14, 1998. Review of the submitted documentation finds that the request was submitted more than one year after the date of service. The Division finds that the request for dispute resolution was not submitted timely. The Division concludes that requestor has not met the requirements of §133.305(a).
2. This dispute relates to inpatient hospital services. The former agency's *Acute Care Inpatient Hospital Fee Guideline* at 28 Texas Administrative Code §134.400, 17 *TexReg* 4949, was declared invalid in the case of *Texas Hospital Association v. Texas Workers' Compensation Commission*, 911 *South Western Reporter Second* 884 (Texas Appeals – Austin, 1995, writ of error denied January 10, 1997). As no specific fee guideline existed for acute care inpatient hospital services during the time period that the disputed services were rendered, the 1991 version of 28 Texas Administrative Code §134.1(f) applies as the proper Division rule to address fee payment issues in this dispute, as confirmed by the Court's opinion in *All Saints Health System v. Texas Workers' Compensation Commission*, 125 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied). 28 Texas Administrative Code §134.1(f), effective October 7, 1991, 16 *Texas Register* 5210, requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, sec. 8.21(b), until such period that specific fee guidelines are established by the commission."
3. Former Texas Workers' Compensation Act section 8.21 states, in pertinent part, that "All guidelines for medical services under this Act must be fair and reasonable and may not provide for payment of fees in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living when the fees for the treatment are paid by the injured individual or by someone acting on the injured individual's behalf. In establishing the fee guidelines, the commission shall consider the increased security of payment afforded by this Act."
4. 28 Texas Administrative Code §133.305(d)(7), effective June 3, 1991, 16 *Texas Register* 2830, requires that the request shall include "copies of all written communications and memoranda relating to the dispute." Review of the documentation submitted by the requestor finds that the request does not include a copy of explanation of benefits or other written communications and memoranda pertinent to the dispute. The

Division concludes that the requestor has not met the requirements of §133.305(d)(7).

5. Review of the submitted documentation finds that:

- The requestor's position statement asserts "The predecessor to rule 134.400 was Rule 42.110(b)(2) which established an interim guideline of '...adjusted billed charges times a ratio of .90'."
- The Division notes that former Division rule at 28 Texas Administrative Code §42.110(b)(2) is not applicable to the services in dispute. As noted above, the 1991 version of 28 Texas Administrative Code §134.1(f) applies as the proper Division rule to address fee payment issues in this dispute, as confirmed by the Court's opinion in *All Saints Health System v. Texas Workers' Compensation Commission*, 125 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied).
- The requestor's supplemental position statement asserts that "We believe the evidence unquestionably demonstrates that the charges were fair and reasonable. The analysis shows the Hospital's average charges per case are reasonable as they are similar to the average charges per case for Texas hospitals not affiliated with Columbia/HCA HealthCare Corporation of a similar size (in terms of number of beds) and of a similar locale (in terms of urban or rural areas)... Moreover, you have the affidavit of an officer of the Hospital confirming that the Hospital charged the same amounts for work-related injuries without regard to coverage for the patient. Thus, the Hospital has conclusively proved that its charges in this case were fair and reasonable."
- Regardless of whether the hospital billed its usual and customary charges or whether the charges were comparable to charges billed by other hospitals for similar services, no documentation was found to support that the amount charged for the disputed services represents a fair and reasonable reimbursement for the services in dispute.
- The Division finds that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. Such a reimbursement methodology would leave the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs. Therefore, a reimbursement amount that is calculated based upon a percentage of a hospital's billed charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
- The requestor does not discuss or explain how payment of the amount sought would result in a fair and reasonable reimbursement for the services in this dispute.
- The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement for the disputed services.
- The requestor does not discuss or explain how payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.
- The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under 28 Texas Administrative Code §133.305. The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

11/15/2011
Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.